

9/16/2009

COA#: TC#: 2007-CR-885-B

RE: Case No. AP-76,020

STYLE: LUCIO, MELISSA ELIZABETH

On this day, this Court has denied the Appellant's motion for the Court Reporter to provide official transcription of defendant's oral statement recorded on video.

Louise Pearson, Clerk

Larry Warner
Attorney at Law
2945 JACARANDA
Harlingen, TX 78550

ORIGINAL

denied
9-14-09
pc

In the Court of Criminal Appeals of Texas

No.AP 76,020

Melissa Elizabeth Lucio vs. The State of Texas

On direct appeal from the 138th District **RECEIVED IN**
COURT OF CRIMINAL APPEALS

Cameron County

AUG 25 2009

Trial Court No.07-CR-885-B **Louise Pearson, Clerk**

The State of Texas Vs. Melissa Elizabeth Lucio

Motion Directed to the Court of Criminal Appeals
to Direct the Court Reporter to Provide an
Official Transcription of the Defendant's Oral
Statement Recorded on Video and Played before the
Jury. (RR Vol.32,p.51,13-14) **FILED IN**
COURT OF CRIMINAL APPEALS

AUG 27 2009

Louise Pearson, Clerk

To the Honorable Judges of the Court of Criminal
Appeals:

Mr. Warner, Counsel for appellant, moves the

Court of Criminal Appeals to Direct the Court Reporter to Provide an Official Transcription of the Defendant's Oral Statement Recorded on Video and Played before the Jury. (RR Vol.32,p.51,13-14)

1. Volume 32,page 51, Lines 13-14 of the Reporter's Record reads:

"Videotape played with Officer Cruz interviewing the defendant and stopped at 10:37 a.m." (RR 32 51 13-14)

2. The videotape is not transcribed in the reporter's record.

3. The record is incomplete since it does not include a transcription of the videotape.

4. The Court will please take judicial notice that the Appellant, Ms. Lucio, is indigent. TEX.R.EVID.201, since she has appointed counsel, Mr. Warner. This Court has held that it may take judicial notice of appointed counsel for indigents

in criminal cases. **Wood v. State**, 511 S.W.2d 37, 46
hn18(1974)

5. An indigent appellant is entitled to a
complete record. **Griffin v. Illinois**, 351
U.S.12, 13-14 fn3(1956) U.S.CONST., amend.XIV

6. An indigent appellant is entitled to a
complete record. TEX.CONST.art.I, secs.13 &
19; TEX.CONST.art.I, sec.20 [due course and equal
protection]

7. The incompleteness is important to this
case and is not harmless beyond a reasonable
doubt. Counsel expects to present an issue on the
legal sufficiency of the evidence. Counsel expects
to present an issue on the factual sufficiency of
the evidence. He cannot reasonably be expected to
do that without a transcription of the principal
item of the evidence, the defendant's statement.

Counsel and the Court both need an official

transcription of the defendant's statement. Elsewise each judge would be left to consider for herself or himself precisely what the Appellant said in the statement.

This Court has in the past required counsel to bring the incomplete record to the attention of the *trial* Court at the time of trial. **Williams v. State**, 937 S.W.2d 479, 487 (Tex.Crim.App.1996). **Williams** was decided under the "old" rules. The "new" rules were adopted in 1997. The Court should reconsider its decision in **Williams** in the light of TEX.R.APP.P.34.6(d), which provides:

"(d) Supplementation. If anything relevant is omitted from the reporter's record, the trial court, the appellate court, or any party may by letter direct the official court reporter to prepare, certify, and file in the appellate court a supplemental reporter's record containing the omitted items. Any supplemental reporter's record is part of the appellate record."

TEX.R.APP.P.34.6(d)

Williams is further distinguishable in that in **Williams** the testimony of a witness was untranscribed while in Lucio the statement of the defendant herself in untranscribed.

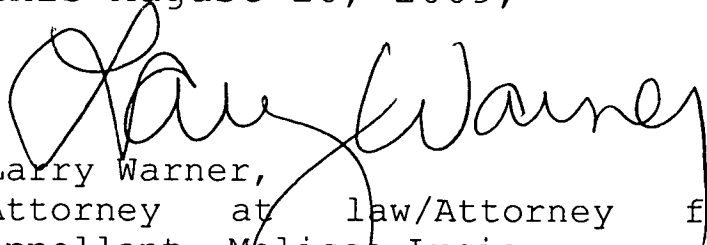
Conclusion and request for relief

The Court of Criminal Appeals should direct the court reporter to provide an official transcription of the defendant's oral statement recorded on video and played before the jury. (RR

Vol. 32, p. 51, 13-14) (RR Vol. 32, p. 51, 13-14) TEX. R. APP. P. 34.6(d)

Respectfully submitted

this August 20, 2009,

A handwritten signature in black ink, appearing to read "Larry Warner". The signature is fluid and cursive, with the first name "Larry" and last name "Warner" clearly distinguishable.

Larry Warner,
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In the Court of Criminal Appeals of Texas

No.AP 76,020

Melissa Elizabeth Lucio vs. The State of Texas

On direct appeal from the 138th District Court

Cameron County

Trial Court No.07-CR-885-B

Certificates of Service

I certify that I mailed a true copy of this Motion Directed to the Court of Criminal Appeals to Direct the Court Reporter to Provide an Official Transcription of the Defendant's Oral Statement Recorded on Video and Played before the Jury. (RR Vol.32,p.51,13-14) to Armando Villalobos, District Attorney, 974 East Harrison St., Brownsville, Tx 78520, Attention Hon. Rene

Gonzales on August 20, 2009.

I also certify that I mailed a true copy of this Motion to Al Flores, Court Reporter, 430TH District Court, 111 S. 9th Edinburg, TX 78539 on August 20, 2009.

Respectfully submitted

this August 20, 2009,

A handwritten signature in black ink, appearing to read "Larry Warner", is written over the typed name and address.

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